



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

DONALD W. DOWNES
CHAIRPERSON

THE ENERGY & TECHNOLOGY COMMITTEE

House Bill 6302: AAC REVISIONS TO THE UTILITY STATUTES

February 3, 2009

TESTIMONY OF CHAIRMAN DONALD W. DOWNES

The DPUC supports the passage of this proposal. This proposal would make various changes to the Title 16 that would improve the agency's ability to perform its duties and advance the interests of the state's utility customers. Specifically this proposal: This proposal would modify the provisions of Title 16 in the following manner:

1. Retention of Consultants for Federal Proceedings

Allows the DPUC to retain non-legal consultants to assist agency staff in proceedings before various federal agencies by providing expertise in areas where its staff lacks expertise or where the consultants are needed to supplement DPUC staff expertise.

Under current law, the provisions of Title 16 permit the DPUC to retain outside expert services to assist the agency in performing its statutory duties under a variety of circumstances. Most notably, the provisions of §16-18 allow the DPUC to retain the services of consultants to assist the agency in proceedings that the agency itself is conducting, and the provisions of §16-6a allow the DPUC, through the Attorney General's office, to obtain the services of outside legal counsel to appear in matters before certain specified federal agencies.

With the passage of the new Federal Energy Act and as a result of our ongoing experience in several recent federal proceedings, it has become apparent that a problematic gap exists in the current law which prevents the DPUC from directly retaining outside experts (non-legal) to assist the agency with its participation before federal proceedings. Absent this proposed change, if outside consulting services are required, the DPUC can only acquire such services through outside legal counsel that we have retained pursuant to §16-6a. With this proposed change, the DPUC believes that it will gain much needed administrative flexibility to when appropriate, directly retain outside technical expertise allowing the agency to secure these services on a more efficient and cost-effective basis.

2. Uncontested Procurement

The department seeks language that would clarify that all DPUC procurements are uncontested proceedings in furtherance of common law standards for agency sponsored procurements. This modification would avoid the opportunity for potential delays and substantial hindrance in the implementation of the agency bidding process.

The purpose of this request is to avoid appeal and further delays in proceedings by disappointed bidders that not only delay but can also derail implementation of selected projects as recently experience by one of the procurement auctions the department conducted in furtherance of the Energy Independence Act. Making all procurements uncontested would strengthen the application of the common law regarding disappointed bidders in auctions and procurements. This rule provides that disappointed bidders have no standing to appeal unless they can prove that a procurement was tainted by fraud, corruption or other intentional misconduct. The rationale for the rule is that public procurements are conducted for the public good, not for the benefit of the bidder seeking to sell its goods or services in the procurement process and that disappointed bidders should not be able to frustrate the public good by taking appeals which could delay or even prevent implementation of the results of the procurement.

3. Customer Interest on Security Deposits

Clarifies current law and current practices by adding references to Department of Banking at appropriate points in the statute that states the basis upon which interest on utility customer security deposits is to be calculated.

Currently, the provisions of 16-262(c) & (d) specify the standard by which interest on utility customer security deposits is to be calculated. In several locations in this section, the statutory provisions make alternative references to the Federal Reserve Bulletin and the CT Banking Commissioner as the basis for determining the appropriate interest rate. As a result of this fragmented statutory drafting, in looking to the statute for guidance on the matter utility customers and companies are frequently confused. The DPUC regularly receives utility customer and utility company inquiries concerning the amount of interest that utilities pay on customer deposits. In accordance with current law, the DPUC relies upon the CT Banking Department's deposit index (information posted on Banking Department website) when questions arise about interest rate levels. Therefore, in the interest of eliminating this confusion the DPUC seeks to better clarify current law and current practices by adding references to the Department of Banking at appropriate points in the statute.

4. Utility Whistleblower Complaints

This proposal would extend the time period for the DPUC to make a preliminary finding on the validity of an employee's complaint that an employer has retaliated against an employee for reporting an employer's misconduct from 30 to 90 business days. By law, the DPUC must begin conducting a full investigation 30 days after making its preliminary determination, where an employer can rebut the presumption that its action was retaliatory. The law also specifies that the employee's return to his previous or comparable position must continue until the full investigation is complete.

Outline of Current Preliminary Finding Process

DPUC must notify employer within 5 business days of receiving the employee's complaint

DPUC to consider written response(s) submitted by the employer within 20 business days of receiving the notice

Both employer and employee, within this 20-day period can (1) submit rebuttal statements in the form of witness affidavits and supporting documents and (2) meet with DPUC to discuss the charges; the DPUC may consider an employer's written response submitted after the 5 day deadline only for good cause shown.

DPUC must consider all of these written and verbal responses in making its preliminary decision as to whether the employer should be required to return the employee to his previous or comparable position.

As shown by timeline described above, and based upon its actual experience, the DPUC has found the current 30 day statutory window for making a preliminary finding to be grossly inadequate. In short, no meaningful or credible investigation into a complaint can be reasonably performed within the existing time period. In particular, as one can imagine, it is almost impossible to seek additional input from the employee and actually issue a preliminary determination in the last 5 days (after 20-day window for employer filings) in order to meet the current 30 day deadline. Therefore, to enhance the likelihood that employee interests (and also ratepayer interests) are not harmed by this unrealistic timeline, the DPUC seeks to extend the statutory deadline to issue a preliminary finding from 30 to 90 business days.

5. Denial of New Electric Service for Hardship Customers

Expands the provisions of the winter shutoff moratorium (for hardship electric customers) that currently prohibits utilities from terminating or refusing to reinstate electric customers to also prohibit utilities from denying hardship customers new electric service.

Under current law, a winter moratorium is annually in place from November 1st to April 15th that prohibits an electric distribution, electric supplier, or a municipal electric utility from terminating or refusing to reinstate residential electric service in hardship cases where the customer lacks the financial resources to pay his/her entire account. This proposal would change the existing language of §16-262c(b)(1) which states, "terminate or refuse to reinstate" to instead read: "terminate, deny or refuse to reinstate." The DPUC is proposing this modification to address several complaints that it received from electric customers who moved into various service franchise areas during the winter shut off moratorium last year. In one particular case, a customer who possessed a certificate of serious illness from their doctor was denied electric service because the municipal electric utility sought a deposit before electric service would be initiated. This proposed change would offer an applicant for new electric service the same shutoff protection as an existing customer with a medical certificate, or an existing customer whose service was terminated and seeks reinstatement of service with a medical certificate.

6. Telecommunication Performance Standards

Allows the DPUC to establish wholesale telecommunication performance standards through administrative rulings rather than through the adoption of regulations.

The DPUC believes that a need does not exist for the performance regulations required by §16-247p. This requirement, contained in this statute, predates the comprehensive performance standards adopted by the Federal Communications Commission (FCC) that have been imposed on the AT&T and Verizon. In the case of Verizon, additional standards have also been adopted by the New York Public Service Commission that has been imposed on Verizon.

For example, the performance standards imposed on AT&T were the result of the FCC's approval of the Ameritech/SBC merger in 1999. These standards, developed after significant involvement from the competitive local exchange carriers (CLEC), are all encompassing and include key measurements, benchmarks, financial penalties and formulae for determining the extent of any resulting penalties. Any failure by AT&T to meet these standards would subject it to the provisions contained in AT&T's carrier interconnection agreements with the affected CLEC(s).

Similar comprehensive performance standards have also been developed by the NYPSC and imposed on Verizon either through its CT Performance Assurance Plan (adopted as a result of Verizon receiving long distance authority from the FCC) as well as the New York State Carrier-to-Carrier Guidelines Performance Standards and Reports, which were developed through a collaborative effort between the NYPSC, Verizon and the Clefs. The DPUC has adopted these same performance standards for Verizon's CT wholesale service offerings. Should Verizon fail to meet these performance measures, it would be required to apply bill credits to the affected customers. Accordingly, the existing statute's requirements for additional state-specific

performance-based regulations would be duplicative to existing standards and are unnecessary.

Finally, the DPUC does not believe that wholesale regulations are conducive to a competitive telecommunications marketplace because they do not recognize the wholesale provider/customer relationship nor would they offer the flexibility required by the providers and customers to negotiate interconnection agreements. The adoption of wholesale performance-based regulations would also prevent the wholesale provider and customer from focusing on more relevant service standards as market conditions dictate. Similarly, the wholesale performance-based structure contemplated under this statute would require the CT wholesale telecommunications service providers and their customers to constantly be in a "catch up" mode as opposed to allowing them to concentrate directly on the provision of telecommunications services to their customers.

7. Timing & Contents of Customer Rate Notices

Modifies current provisions that describe the timing and information to be provided by utility companies when they provide notice to their customers that they have filed an application with the DPUC to amend their rates.

Under current law, regulated utility companies are required to provide written notice to their customers of proposed rate increases by mail at least one week prior to the date that the DPUC holds its public hearings. However, the current statute does not in any manner prescribe how early in time the written notices can be provided to customers. Based upon our experience with several recent rate cases, the DPUC believes that the absence of a statutory limitation on how early notices are mailed to utility customers diminishes the statute's important policy objective of providing appropriate and timely notice to utility customers about upcoming public hearings. With this proposed change, the DPUC seeks to address the shortcomings in the current open-ended timing structure which frequently can result in customer notices being issued so far in advance of the public hearings that attendance and customer participation is not appropriately encouraged.

Moreover, there is no requirement that customer notices include important information like the date, time, and location of scheduled public hearings. This additional information can be provided to customers because the public hearing schedule is established in advance of the actual public hearings. This proposed change will assist customers by requiring that this important information be included on customer notices. As is currently the case, customers will also be able to contact the DPUC directly if they need more information about the public hearings.

Lastly, under current law, the wording of customer notices states that customers can obtain additional information about utility rate filings and the public hearing schedule by calling the DPUC. As a result of this written description, customers frequently call our Consumer Assistance Unit hoping to have their comments on company's rate filings

made part of the DPUC's docket record. These customers are then frustrated to learn that legally in order for their comments to be included in the DPUC's docket record- their comments need to be filed in writing or made in person at a hearing of the particular rate case that they have a concern about. This proposed change will assist customers by requiring customer notices to clearly state the manner in which input can be appropriately provided to the DPUC for those customers who desire to participate in the DPUC's ratemaking process.

8-16. Electric Broker Registration

Establishes a new requirement that electric brokers doing business in the State register with the DPUC in the same manner as electric aggregators.

It has come to our agency's attention that there are a variety of entities that are presently doing business in the State that are operationally similar to "electric aggregators" but are not in any manner regulated by the DPUC. Under current law, electric aggregators are defined as entities that group customers together to negotiate their purchase of electricity from an electric supplier.

The DPUC believes that it is in the interest of the State's electric consumers and the expanding retail electric marketplace to have these new entities register with the State. The imposition of a registration requirement will ensure that some limited regulatory framework is in place to assist customers in being able to substantiate the legitimacy of entities that they may consider using to assist them in securing electric supply contracts. The proposed language creates a new "electric broker" definition and makes a variety of other modifications to related statutes where the term aggregator currently appears. As proposed, "electric broker" would be defined as an entity that arranges or acts as an agent, negotiator or intermediary in the sale or purchase of electric generation services between any end use customer in the state and any electric supplier, but does not take title to any of the generation services sold.

17. Appointment of Commissioners to serve on boards or councils in furtherance of State Objectives and the Public Interest

Would authorize the Chairman to appoint a designee of the DPUC to serve on boards as a director or member of a board established to fulfill Connecticut mandates on stated goals such as Climate Change or on other relevant state policy issues regarding utility regulation and the public interest.

While DPUC members serve on a variety of boards and councils, currently, there is an issue that without clear statutory authority, DPUC commissioners do not have the necessary legal protection to fully participate as directors in organizations such as the Regional Greenhouse Gas Initiative, Inc. Establishing clear statutory authority for members of the DPUC to participate and fully

engage in such organizations within their expertise and jurisdiction would permit them to fulfill their duties on behalf of the State as members of these organizations and provide them with the authority to: enter into contracts with technical consultants, as necessary for special studies, advice and assistance; consult with and advise and exchange information with other departments or agencies of the state; and to serve in their official duties on matters that are crucial to the State of Connecticut such as Climate Change. Sec. 16-2 et seq. contain several provision prohibiting commissioners and DPUC employees from certain activities that would pose a conflict of interest to their official duties but no clear authority to engage in organizations that stem from their official duties or that the Governor has pronounced as important policy objectives for the State and which the DPUC maintains a significant role in.

